

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jan 08, 2025**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

EMANUEL L. FINCH, SR.,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS;

GREGORY HOPKINS; and SUSAN

BILLER,

Defendants.

No. 2:24-CV-00148-SAB

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Before the Court is Defendants' Motion for Summary Judgment, ECF No. 36. Plaintiff is pro se. Defendants are represented by Michelle M. Young. The motion was heard without oral argument.

Plaintiff is a state prisoner currently housed at Airway Heights Corrections Center ("AHCC"). He is suing the Washington State Department of Corrections ("DOC"), as well as two DOC staff employed at AHCC.<sup>1</sup> He asserts his constitutional rights were violated when officials did not facilitate his appearance at a civil proceeding in Pierce County Superior Court ("the hearing"). He further claims that multiple DOC policies are unconstitutional.

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<sup>1</sup> Plaintiff initially filed his complaint in the Spokane County Superior Court, but Defendants timely filed for removal pursuant to 28 U.S.C. § 1441.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT #1**

1 Defendants now move for summary judgment, asserting (1) Defendants had  
2 no affirmative duty to facilitate Plaintiff's appearance at the hearing; (2)  
3 Defendants did not interfere with Plaintiff's access to the hearing; (3) Plaintiff has  
4 not shown a specific actual injury involving a non-frivolous claim; and (4) the  
5 challenged DOC policies are constitutional.

### 6 **Motion Standard**

7 Summary judgment is appropriate "if the movant shows that there is no  
8 genuine dispute as to any material fact and the movant is entitled to judgment as a  
9 matter of law." Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless  
10 there is sufficient evidence favoring the non-moving party for a jury to return a  
11 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
12 (1986). The moving party has the initial burden of showing the absence of a  
13 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).  
14 If the moving party meets its initial burden, the non-moving party must go beyond  
15 the pleadings and "set forth specific facts showing that there is a genuine issue for  
16 trial." *Anderson*, 477 U.S. at 248.

17 In addition to showing there are no questions of material fact, the moving  
18 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*  
19 *Wash. L. Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled to  
20 judgment as a matter of law when the non-moving party fails to make a sufficient  
21 showing on an essential element of a claim on which the non-moving party has the  
22 burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party cannot rely on  
23 conclusory allegations alone to create an issue of material fact. *Hansen v. United*  
24 *States*, 7 F.3d 137, 138 (9th Cir. 1993).

25 When considering a motion for summary judgment, a court may neither  
26 weigh the evidence nor assess credibility; instead, "the evidence of the non-movant  
27 is to be believed, and all justifiable inferences are to be drawn in his favor."  
28 *Anderson*, 477 U.S. at 255.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT #2**

### Underlying Facts

The following facts are viewed in the light most favorable to Plaintiff, the non-moving party.

In late 2022, Plaintiff filed a civil lawsuit against the Pierce County Superior Court. On June 12, 2023, Pierce County Judicial Assistant Patti Wood contacted Defendant Susan Biller, who was serving as the AHCC Legal Liaison Officer, to provide her with call-in information for Plaintiff to access the hearing on June 20, 2023. Defendant Biller replied to Ms. Wood and informed her that Plaintiff's lawsuit did not fall into the category of hearings that are facilitated under DOC policy.

Ms. Wood then contacted Defendant Gregory Hopkins, who was serving as Plaintiff's Corrections Counselor. Defendant Hopkins informed Ms. Wood that he would place Plaintiff on the callout list for June 20, but that it would be Plaintiff's responsibility to call in to the hearing, and that AHCC staff would not be able to assist Plaintiff further. Ms. Wood replied that she understood the policy and Plaintiff had been mailed a letter with the call-in information for the hearing.<sup>2</sup>

On June 20, 2023, Plaintiff was called out of his cell to the dayroom where the phones are located but did not call in to the hearing. Plaintiff then sent Defendant Hopkins a message indicating that Plaintiff had waited in the dayroom for forty minutes but "nothing happened." While Plaintiff was in the dayroom, Defendant Hopkins entered and exited his office multiple times, but Plaintiff did not communicate any issues with his ability to use the phones or otherwise access

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<sup>2</sup> Plaintiff disputes that he was provided with the call-in information; however, Defendants have provided emails from Ms. Wood stating that she had provided Plaintiff with the information. Plaintiff has requested Defendants file a declaration from Ms. Wood, although it is unclear what purpose this would serve in light of the original emails.

1 the hearing. After he failed to appear at the hearing, Plaintiff's civil suit was  
2 dismissed without prejudice.

### 3 **Legal Framework**

4 Plaintiff brings claims pursuant to 42 U.S.C. § 1983 for violations of his  
5 constitutional rights under the First and Fourteenth Amendments. Specifically, he  
6 alleges a claim for denying him access to the courts and further alleges that  
7 multiple DOC policies themselves are unconstitutional.

#### 8 **A. 42 U.S.C. § 1983**

9 42 U.S.C. § 1983 provides causes of action against a person, who, acting  
10 under color of state law, deprives another of rights guaranteed under the  
11 Constitution; it does not create any substantive rights. *Jones v. Williams*, 297 F.3d  
12 930, 934 (9th Cir. 2002).

13 To succeed in bringing a claim under § 1983, then, the plaintiff must show:  
14 (1) that their constitutional rights were violated, and (2) the defendants' actions  
15 were taken under color of state law. *Grichen v. Collier*, 254 F.3d 807, 812 (9th Cir.  
16 2001).

#### 17 **B. First Amendment**

18 Prisoners have a constitutional right to access the courts. *Bounds v. Smith*,  
19 430 U.S. 817, 821 (1977). That said, states are only required to provide prisoners  
20 with the tools necessary to attack an underlying sentence or challenge conditions of  
21 confinement. *Lewis v. Casey*, 518 U.S. 343, 355 (1996). "Impairment of any *other*  
22 litigating capacity is simply one of the incidental (and perfectly constitutional)  
23 consequences of conviction and incarceration." *Id.* (emphasis in original).  
24 Furthermore, a prisoner must demonstrate that he or she was actually hindered  
25 from pursuing a legal claim. *Id.* at 351 (for example, "that he had suffered arguably  
26 actionable harm that he wished to bring before the courts but was so stymied by  
27 inadequacies of the law library that he was unable even to file a complaint").

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### 1 E. Qualified Immunity<sup>3</sup>

2 A government official is entitled to qualified immunity from a claim for  
3 damages unless the plaintiff raises a genuine issue of fact showing (1) “a violation  
4 of a constitutional right,” and (2) that the right was “clearly established at the time  
5 of [the] defendant’s alleged misconduct.” *Ballentine v. Tucker*, 28 F.4th 54, 61 (9th  
6 Cir. 2022) (quotation omitted). The Court may analyze these elements in any order.  
7 *Id.*

8 “A Government official’s conduct violates clearly established law when, at  
9 the time of the challenged conduct, ‘the contours of a right are sufficiently clear’  
10 that every ‘reasonable official would have understood that what he is doing  
11 violates that right.’” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). It is not  
12 necessary that a case is directly on point, instead existing precedent must have  
13 placed the statutory and constitutional question beyond debate. *Id.*

### 14 Analysis

15 Defendants are entitled to summary judgment on all of Plaintiff’s claims:

16 1. Defendants are entitled to qualified immunity. As noted above, a prisoner  
17 does not have a constitutional right to access the courts, except when attacking the  
18 underlying sentence or challenging the conditions of confinement. Here, Plaintiff  
19 sought to attend the hearing as part of a civil lawsuit against the Pierce County  
20 Superior Court. Even assuming Defendants hindered Plaintiff from attending the  
21 hearing, he had no constitutional right to do so, and they therefore could not have  
22 violated his constitutional rights. *See Lewis*, 518 U.S. at 355.

23 2. Even when viewing the facts in the light most favorable to Plaintiff, no  
24 reasonable jury would find that Plaintiff’s First Amendment rights were violated.  
25 As discussed above, Plaintiff did not have a constitutional right to attend the  
26 \_\_\_\_\_

27 <sup>3</sup> While not raised in the pleadings, the Court nevertheless finds for the reasons  
28 below that the doctrine of qualified immunity applies in this matter.

1 hearing. Defendants nevertheless arranged for Plaintiff to be called out of his cell  
2 to call into the hearing and he chose not to. Even assuming Plaintiff had a right to  
3 pursue his civil suit, he has failed to demonstrate actual hinderance to his suit  
4 because it was dismissed without prejudice. *See id.* at 351

### 5 **Plaintiff's Remaining Claims**

6 Plaintiff also challenges the constitutionality of two DOC policies: (1) the  
7 Legal Access Policy ("DOC 590.500") and (2) the Mail Policy ("DOC 450.100").

8 With regard to DOC 590.500, Plaintiff simply concludes that the policy (as  
9 well as the associated Virtual/Telephonic Hearing Request Form) "create a bias  
10 and prejudice" against inmates but does not elaborate further. He also contends the  
11 policy's requirement that a hearing notice must come from a court or attorney (as  
12 opposed to the inmate or the inmate's family) is contradictory to DOC's policy to  
13 "provide[] meaningful access to courts." Even assuming Plaintiff's assertion were  
14 correct, there is no liability under § 1983 for violating prison policy. *See Cousins v.*  
15 *Lockyer*, 568 F.3d 1063, 1070 (9th Cir. 2009) (alleged failure to follow prison  
16 policy does not establish federal constitutional violation). Moreover, Defendants  
17 have asserted the policy serves the legitimate penological interests of ensuring  
18 safety and security within DOC facilities. *See Wilkinson v. Austin*, 545 U.S. 209,  
19 227 (2005) (ensuring safety is the dominant consideration in the context of prison  
20 management).

21 With regard to DOC 450.100, Plaintiff contends the policy prohibits him  
22 from sending legal mail to private individuals. The thrust of Plaintiff's argument is  
23 unclear: the policy lists entities with whom correspondence is considered "legal  
24 mail" but does not prohibit such mail from being shared with other individuals. To  
25 the extent that Plaintiff's argument seems to imply that he has a right to send legal

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1 mail to other individuals in custody at AHCC,<sup>4</sup> Plaintiff is mistaken: Defendants  
2 have a clear penological interest in prohibiting mail between inmates incarcerated  
3 within the same facility. *See Turner v. Safley*, 482 U.S. 78, 91–93 (1987)  
4 (upholding policy prohibiting mail correspondence between inmates at separate  
5 facilities).

### 6 **Conclusion**

7 Plaintiff has not shown that his constitutional rights were violated under the  
8 First or Fourteenth Amendments. In light of this, Defendants are entitled to  
9 qualified immunity. Therefore, summary judgment in favor of Defendants is  
10 appropriate.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. Defendants' Motion for Summary Judgment, ECF No. 36, is  
13 **GRANTED.**

14 2. The Clerk of Court is directed to **ENTER JUDGMENT** in favor of  
15 Defendants and against Plaintiff.

16 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
17 provide copies to Plaintiff and counsel, and **close the file.**

18 **DATED** the 8th day of January 2025.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

24 Stanley A. Bastian  
25 Chief United States District Judge  
26

27 <sup>4</sup> Plaintiff's Complaint states that he is "not allowed to send legal mail here at  
28 AHCC to a 'private' person."